CIVIL WRIT JURISDICTION CASE No.3530 OF 1989

In the matter of an application under Articles 226 and 227 of the Constitution of India.

THE DIVISIONAL FOREST OFFICER (D.T.O) FOREST OFFICE.GAYA--
------ PETITIONER

Versus

1. THE JOINT DIRECTOR CONSOLIDATION, GAYA
2. THE DEPUTY DIRECTOR OFCONSOLIDATION(CENTRAL PLANNING) GAYA-CUM-AURANGABAD
3. THE CONSOLIDATION OFFICER, AMAS, DISTRICT- GAYA
4. (a) BIBI IMAMAN, W/O LATE HAYAT KAHN
4. (b) GULAM GAUS @ KHAN
4. (c) MUIN KHAN
4. (d) NAZIM KHAN
4. (e) TAZIM KHAN
4. (f) HASIM KHAN ALL S/O LATE HAYAT KHANR/O VILLAGE - SAUFGANJ, TOLA BELHARI ANCHAL & PS. BANKE BAZAR, DISTT-GAYA-- RESPONDENTS

For The Petitioner : Mr. Anil Kumar Verma JC to SC-3
For The Respondent : None

P R E S E N T
THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A.K.Tripathi,J State is before the Court challenging the order dated 29.7.1987 passed by the Joint Director, Consolidation, Gaya in Revision Case No.568 of 1982 contained in annexure-6. They want quashing of the order as it has set aside the earlier orders dated 16.3.1981 passed by the Consolidation officer, Amas and order dated 17.7.1981 passed by the Deputy Director, Consolidation in Appeal No. 25 of 1981-82.

Learned counsel for the State submits that the revisional authority has committed an apparent error of law and fact by directing recording of the names of the private respondents over the piece and parcel of land which are related to government land and declared forest land under Bihar Private Forest Act, 1947 in terms of sections 14 and 21 of the Act. They have brought the notification dated 17.12.1949 as annexure-1.

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The disputed lands are of 21.48 acres relating to Khata No. 88 and Khesra no. 731 (old) which now relates to new Khesra No. 1565 etc. Initially this land was recorded as Gair Mazarua Mallik in the nature of forest in cadastral survey. Since encroachments were being made, Government of Bihar vide notification contained in annexure-1 declared the said land to be the forest land and prohibited its exploitation or occupation by anybody. By virtue of the notification the lands in question came in peaceful possession of the department of Forest and the ex-landlord never raised any objection in this regard. Subsequently in yet another notification under section 30 of the Bihar Private Forest Act dated 29.5.1953 this position was reiterated as would be evident from perusal of ananexure-2 to the writ application. But certain interested persons represented by private respondents and their legal heirs tried to occupy the lands in question by creating ferzi records and made efforts in this regard earlier before the Consolidation officer under section 10(4) of the Act and failed as would be evident from annexure-4 to the writ application.

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However not satisfied with the order the respondents invoked the revisional power under section 10(6) and vide order contained in annexure-6 dated 29.7.1987 the revision was allowed and direction was issued to record the names of the private respondents in the records of right. It is in this background the present writ application has come to be filed.

Earlier on the death of respondent no.4 a

substitution petition was filed which was allowed and thereafter notices have gone to the substituted heirs. It was validly served as would be evident from the office note in this regard dated 23.10.2008 but nobody has bothered to appear or defend their interest when the matter is taken up today.

Prima facie two notifications contained in annexures 1 and 2 relate to the lands in question. If this is so and if it has been notified way back in the year, 1949 as well as 1953 that the lands were forest lands in question then it is not understood as to how the revisional authority could accept the stand of the respondents that they had acquired a right, title and interest through an ex-landlord. Whatever be their source of acquisition but it is a vital fact which goes to the root of the matter and did require consideration by the revisional court. This writ application therefore requires interference. Annexures 6 dated 29.7.1987 is hereby set aside. The matter is remanded back to the authority with a direction that he shall consider this aspect of the matter as well after considering the evidence and the notifications which have been issued by the State of Bihar from time to time with regard to the nature of the land in question.

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This writ application is allowed with the above direction.

(Ajay Kumar Tripathi, J.)

Patna High Court, Patna.
Dated the 21st November, 2008
NAFR (RPS).